

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE
NINTH MEETING: FEBRUARY 16-18, 1995
LOS ANGELES, CALIFORNIA

The ninth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Tessie Naranjo at 8:30 a.m., Thursday, February 16, 1995 at the Garden Room A, Airport Marina Hotel, Los Angeles, California. The following committee members, National Park Service staff, and others were in attendance:

Members of the committee:

Ms. Tessie Naranjo, Chair
Ms. Rachel Craig
Mr. Jonathan Haas
Mr. Dan Monroe
Mr. Martin E. Sullivan
Mr. William Tallbull
Mr. Phillip L. Walker

National Park Service staff present:

Mr. Francis P. McManamon, Departmental Consulting Archaeologist, Washington, DC
Mr. C. Timothy McKeown, NAGPRA Team Leader, Washington, DC
Mr. Sam Ball, NAGPRA Team, Washington, DC

The following were in attendance during some or all of the proceedings:

Ms. Glenda Ahhaizzy, American Indian Com., Hacienda Heights, California
Mr. Martin Alcala, Gabrielino/Tongva Tribal Council, Venice, California
Ms. Susan Alvarez, US Army, Fort Hunter Liggett, Jolan, California
Mr. Roger Anyon, National Museum of Natural History, Smithsonian Institute, Washington, DC
Ms. Catherine Banker, California State University at Long Beach, California
Mr. Richard M. Begay, Navajo Nation, Window Rock, Arizona
Ms. Angie Behrne, Gabrielino Tribal Council, Los Angeles, California
Mr. Mike Burgess, Long Beach, California
Ms. Yolanda Chavez, Cultural Resource Specialist, Guidville Indians Rancheria, Talmage, California
Mr. Daniel Christopher, Loyola Marymount University, Los Angeles, California
Mr. Charlie Cooke, Chumash, Acton, California
Ms. Sharon Cotrell, Gabrielino/Tongva Researcher, Long Beach, California
Ms. Sallie Cuaresma, NACE, Gardena, California
Mr. Frank J. Diaz de Leon, Koso Native Graves Protection Committee, Lone Pine, California
Ms. Jacqueline Dixon, Southern California Indian Center, Carson, California
Mr. Steve Dondero, California Department of Transportation, Sacramento, California
Mr. Robert F. Dorame, Special Projects, GTTC, Los Angeles, California

Mr. Samuel H. Dunlap, Professional Native American Cultural Resource Monitor, Temecula, California

Mr. William Eckhardt, Naval Air Weapons Station, China Lake, California

Ms. Nancy Evans, Department of Parks & Recreation and State Office of Historical Preservation, Newport Beach, California

Ms. Gillian Flynn, National Museum of Natural History, Smithsonian Institute, Washington, DC

Ms. Reba Fuller, Central Sierra Me-Wuk Cultural & Historical Preservation Committee, Tuolumne, California

Ms. Lynn Gamble, American Indian Studies Center, UCLA, Los Angeles, California

Ms. D. Garcia, Sacred Sites Committee, Antelope Valley, Covina, California

Ms. Mary Garcia, North Hollywood, California

Ms. Martha Graham, American Museum of Natural History, New York, New York

Ms. Margaret Hardin, Natural History Museum, Los Angeles, California

Ms. Donna Haro, Salinan Nation, Concord, California

Mr. Lawrence Hart, Cheyenne Cultural Center, Clinton, Oklahoma

Ms. Helen Herrera Anderson, ANA, Santa Monica, California

Ms. Andrea Hunter, Smithsonian Institute Repatriation Committee, Flagstaff, Arizona

Ms. Nancy Jackson, Gene Autry Western Heritage Museum, Los Angeles, California

Mr. Russell Kaldenberg, Bureau of Land Management, Sacramento, California

Mr. Tom Killion, National Museum of Natural History, Smithsonian Institute, Washington, DC

Mr. Lamont Laird, Joint Shawnee Council, Miami, Oklahoma

Mr. Paul Little, North Dakota Intertribal Reinterment Committee, Devils Lake, North Dakota

Ms. Cynthia Longhorn, Tribal Secretary, Absentee Shawnee, Shawnee, Oklahoma

Mr. Edward M. Luby, Hearst Museum of Anthropology, Berkeley, California

Ms. Stephanie Maksey-Kelley, Smithsonian Institute Repatriation Office, NMNH, Washington, DC

Ms. Fern Mathias, American Indian Movement, Los Angeles, California

Ms. Patricia Mendenhail, Southern California Indian Center, Van Nues, California

Mr. Tim Mentz, Sr., Standing Rock Sioux Indian tribe and North Dakota Intertribal Reinterment Committee, Fort Yates, North Dakota

Ms. Patricia Moore, Catalina Island Museum, Avalon, California

Mr. Bill Olsen, California Bureau of Land Management, Sacramento, California

Ms. Judith Polanich, Hearst Museum, University of California, Berkeley, California

Ms. Mary Ellen Powell, Los Angeles County Museum of Art, Los Angeles, California

Mr. Charles Rhyne, Reed College Department of Art, Portland, Oregon

Mr. David Robinson, Koso Native Graves Protection Committee, Goleta, California

Ms. Lillian Robles, Juaneño Elder, Long Beach, California

Mr. Louis Robles, Long Beach, California

Mr. Eugene Royce, Department of Anthropology, California State, Long Beach, California

Mr. Glenn Russell, UCLA Fowler Museum of Cultural History, UCLA, Los Angeles, California

Ms. Alyce Sadongei, Smithsonian Institute Natural Museum of American Indian, Washington, DC

Mr. Merton Sandoval, Jicarilla Apache, Dulce, New Mexico

Mr. Dan Saunders, Earth Tech, Colton, California

Mr. Leroy Seidel, UCLA American Indian Studies Center, Los Angeles, California
Mr. Chuck Smythe, National Museum of Natural History, Smithsonian Institute, Washington, DC
Mr. Kenny Sonoquia, Earth Tech, Colton, California
Mr. Donald Sutherland, Bureau of Indian Affairs, Washington, DC
Ms. Pauline Spear, California State Parks & Recreation, Sacramento, California
Mr. Robert Steinbach, National Food Relief Inc., Malibu, California
Mr. Fritz Stern, Hearst Museum, University of California, Berkeley, California
Ms. Nancy Talamantes, Southern California Indian Center, Inc., Commerce, California
Mr. Russell Thornton, Repatriation Review Committee National Museum of Natural History, Los Angeles, California
Mr. Paul Varela, Oakbrook Chumash People, Thousand Oaks, California
Mr. Dan Weiner, American Museum of Natural History, New York, New York
Ms. Terri Wessel, Earth Tech, Hesperia, California
Ms. Diana Wilson, Pitzer College, Los Angeles, California
Ms. Sonya Wolff, Smithsonian Institute Natural Museum American Indian, Bronx, New York
Mr. Rob Wood, California State Parks & Recreation, Sacramento, California
Ms. Lola Worthington, UCLA American Indian Studies Center, Long Beach, California
Mr. Andy Yatsko, US Navy, Naval Air Station North Island, San Diego, California

Ms. Naranjo welcomed everyone to the meeting and asked the committee members to introduce themselves. She then asked Mr. Paul Little to provide an opening invocation.

Review of the Agenda

Mr. McManamon welcomed the members of the public to the meeting and explained that the committee meetings are open to the public with scheduled public comment periods. He then introduced Mr. Timothy McKeown and Mr. Sam Ball of the National Park Service (NPS). Mr. McManamon thanked the committee members for serving on the committee and participating at this meeting. Mr. McManamon then gave a brief review of the agenda items, including: developing recommendations to the Secretary of the Interior concerning regulations to implement the statute; disposition of culturally unidentifiable human remains in existing collections; disposition of unclaimed human remains and cultural items from new excavations or inadvertent discoveries on Federal or tribal lands; future applicability of the statute; and the committee's 1993-1994 Report to Congress.

Implementation Update

Federal Register Notices: Mr. McManamon pointed out that a listing and copies of recent notices of inventory completion and notices of intent to repatriate published in the *Federal Register* were included in the committee binders. In addition, an updated list of existing collection summaries for museums and Federal agencies was included in the binders, with a total of 150 new summaries received since the Albany meeting.

Guidance and Outreach Activities: Mr. McManamon reported that the NPS has participated in several training courses and meetings on implementation of the NAGPRA statute, compliance with NAGPRA regulations, and discussions of specific grants projects.

Grants: A total of 52 grant proposals were received from Indian tribes by the February 10, 1995 deadline, which was down slightly from the previous year. The deadline for grant proposals for museums was February 24, 1995. Due to concerns about budgetary changes, proposal evaluations will be a one-step process with the panel evaluating both tribal and museum proposals at one meeting. The proposed grant budget for Fiscal Year 1996 is \$2.295 million, which is approximately the same amount as the previous two fiscal years. The committee discussed the possibility of drafting a letter to the House Appropriations Committee for the Department of the Interior emphasizing the importance of the grants program, pointing out that NAGPRA is bipartisan, and stating that this activity should continue to be supported under a Republican Congress as it was under a Democratic Congress.

Regulations: Mr. McManamon reported that the final regulations have been approved by the Office of the Solicitor and is now ready for signature by the Assistant Secretary for Fish, Wildlife and Parks. The Office of the Assistant Secretary for Indian Affairs and the Bureau of Indian Affairs (BIA) have some concerns regarding additional public review of the regulations and the necessity for finalizing the regulations before the November 16, 1995, inventory deadline. Mr. McManamon explained that the BIA concerns were mostly due to a several comments received from Indian tribes or tribal representatives requesting republication of the regulations in the *Federal Register* for additional public comment. This would mean essentially starting the entire regulatory process from the beginning. Mr. Monroe asked about the current status of the definition of Indian tribe. Mr. McManamon explained that the Office of the Solicitor feels that the current definition -- including only Federally recognized Indian tribes -- is required by the statute.

Other Matters: Mr. McManamon informed the committee about a project that the NPS is undertaking with the Air Force to develop a general guidance document concerning consultation with Indian tribes, Native Hawaiian organizations, and lineal descendants as part of their responsibilities under NAGPRA and the National Historic Preservation Act requirements. The database, when completed, will provide Air Force and other Federal and public officials with a valuable tool to help identify the appropriate tribal officials.

Review of the Committee's 1993 Report to Congress

Mr. Monroe summarized several changes and clarifications made to the draft of the committee's Report to Congress following discussions at the Albany committee meeting. He pointed out that the report specifically addresses the fact that the Smithsonian has not been brought under the provisions of NAGPRA as promised during the initial drafting of the statute. Mr. Haas recommended having this report encompass both 1993 and 1994 since many of the issues discussed were applicable to both years. Mr. McKeown agreed. Mr. Monroe agreed and pointed out that the statistics in the current draft would need updating.

Mr. Haas recommended that the report include a recommendation for legislation to protect Native American graves on non-Federal lands. The committee agreed. Mr. Tallbull added that grave goods

and other items should also be protected. Ms. Craig asked that the regulations include a requirement of tribal consent prior to archaeological excavations. The committee agreed.

Commenting on the proposed reduction in the number of committee meetings per year due to budget constraints, Mr. Monroe stated that the committee has a great deal of difficult and demanding issues yet to resolve and recommended a strong statement in the Report to Congress concerning the necessity of more than two meetings per year. The committee has a lot of work yet to do. Mr. McManamon explained that the Department of the Interior intends to support the committee until its activities are complete. He fully recognizes that these activities will not be completed by the end of the five-year terms of the initial committee members. Mr. McManamon suggested the committee point out in the Report to Congress that implementation of the statute is an essential activity.

On the final day of the meeting, Mr. Monroe read a revised draft of the 1993-1994 Report to Congress. The revised draft included recommendations for: increased funding for the committee to complete final regulations in 1996; expedited review within all departments of the draft regulations; the need to include non-Federally recognized Indian groups as eligible for standing under NAGPRA, such as Indian groups that have participated in treaty negotiation and state- and city-recognized Indian groups; the need to include the Smithsonian Institute under NAGPRA; the need for at least \$10 million in grant funding for Indian tribes and museums in FY 1996; and the need to consider legislation to protect Native American graves located on state or private land. The committee approved the draft and agreed to adopt the report.

The committee also discussed sending a letter to the Secretary of the Smithsonian, with copies to the Director of the National Museum of Natural History, the Director of the National Museum of the American Indian, and the Director of the National Museum of American History, requesting that action be taken to bring the Smithsonian into compliance with NAGPRA and outlining specific reasons why the committee believes that is important. The letter would discuss the commentary received from Native Americans nationwide concerning the noncompliance of the Smithsonian and would address the committee's concern that the current lack of Smithsonian summaries leaves many Indian tribes unaware of potentially affiliated objects currently in the Smithsonian. The letter would also outline various ways that the Smithsonian could be brought into compliance, including policy decision by the Secretary of the Smithsonian. The committee agreed with the content of the letter. Ms. Naranjo and Mr. Monroe would finalize and send the letter.

Discussion of Committee Recommendations Regarding the Disposition of Culturally Unidentifiable Human Remains in Museum or Federal Agency Collections

Mr. Monroe drafted a proposal for the committee's consideration concerning the disposition of culturally unidentifiable human remains. The committee would recommend to Congress that all Indian groups that have participated in treaty negotiations with the United States, whether ratified or not, and all Indian groups recognized by state governments be eligible to repatriate human remains and cultural items using NAGPRA procedures.

Mr. Walker felt that the purpose of the legislation was to empower Native Americans in the decision-making process regarding ancestral human remains. This process is relatively simple when dealing

with human remains and cultural items that are clearly cultural affiliation with a present-day Indian tribe or Native Hawaiian organization. Problems arise when the connection between human remains and cultural items and a present-day Indian tribe or Native Hawaiian organization becomes blurred or when the human remains or cultural items are affiliated with non-Federally recognized Indian groups. The latter situation is quite common in California where many Indian groups were disenfranchised. The statutory definition of Indian tribe denies these historical and cultural groups the right to decide what happens to their ancestral human remains.

Mr. Monroe added that a several public comments emphasize the importance of returning human remains to the correct Indian tribe. Museum and scientific communities generally support tribal consensus regarding repatriation of culturally unidentifiable human remains. This places a great responsibility on Indian tribes to develop consensus agreements. Mr. Monroe emphasized the importance of developing a method to address the narrow definition of Indian tribe and the exclusion of non-Federally recognized Indian groups in order to partially solve the problem of culturally unidentifiable human remains.

Mr. Tallbull wondered why all these Native American human remains were collected in the first place. If the purpose was scientific interest, wasn't it important to document where and from what Indian tribe they were collected or did they just take what was given to them? Mr. Monroe replied that museums began collecting Native American human remains as early as 1830. The reasons were many, both good and bad. Some collectors wanted to understand the origins of Native people in America and their relationship to broader human development. Others tried to categorize Native Americans as less than human in order to justify land grabs. Most museums simply accepted whatever human remains were offered to them.

Mr. Walker added that even as late as the 1970s Native American sites and graves were not protected and were destroyed by road construction. Well-meaning archaeologists would sometimes follow construction equipment to salvage whatever human remains and artifacts were revealed. These items wound up in museum collections. The rate of destruction during this period was such that adequate study could not keep pace with the discoveries.

Mr. Sullivan added that he is optimistic about the positive change in the relationship of universities, museums, Federal agencies, and Indian tribes since NAGPRA was passed. The primary lesson he has learned is that the recovery and reburial of human remains is not a question of power or advantage. It is a serious, sober, demanding, and emotionally-difficult business.

Ms. Craig stated that she is appalled that some human remains are still classified as culturally unidentifiable. No human remains are culturally unidentifiable. She stated that she appreciates the work that Mr. Haas has done on the draft and supports it.

Mr. Haas explained that he feels the important consideration is not whether research has been conducted on human remains, but rather who has the responsibility and the right to make decisions regarding their disposition. The principles behind NAGPRA indicate that this right and responsibility rests with Native Americans and not with museums and archaeologists. The committee can try to help facilitate decisions regarding treatment of culturally unidentifiable human remains, but ultimately the Indian community needs to make that determination. Mr. Haas suggested that the committee's

recommendations not be limited by the current statutory definition of Indian tribe, but otherwise should stay consistent with wording in the Act. He reminded the committee members of the precedent set in Albany when the committee recommended the repatriation of culturally unidentifiable human remains to a non-Federally recognized Indian group. Mr. Haas also explained that the current draft recommendations do not include any new mandates for museums. To do so would hinder resolution of the issue of culturally unidentifiable human remains. He felt, as a scientist, that the scientific community would support the general principles outlined in the draft. A consensus on the disposition of culturally unidentifiable -- such as that already worked out in southern Arizona and in North Dakota -- will prevail. Mr. Monroe added that he has noticed a changed attitude in the museum and scientific community toward the basic philosophy that Native Americans should have the right to determine affiliation.

Mr. Walker and Mr. Haas described the five categories of culturally unidentifiable groups defined in the draft as follows: human remains affiliated with non-Federally recognized Indian groups who have a cultural and historical basis; human remains identified as Native American with no further information; human remains that come from an area with several potentially affiliated groups; human remains that are archaic, going back 2,000 years or more; and human remains for which no information is available. Mr. Walker also pointed out human remains could be culturally unidentifiable based on museum error, that is, where museum records have been misplaced or lost. The committee discussed the possibility of reducing the number of categories to three in order to simplify the process as follows: human remains affiliated with non-Federally recognized Indian groups, ancient human remains with some information, and human remains with insufficient evidence for determination of affiliation.

Mr. Tallbull asked the age of the oldest human remains currently in museums. Mr. Haas replied that he was not aware of any that were older than 10,000 years. Mr. David Robinson, with the Koso Native Graves Protection Committee, stated that human remains have been carbon dated as old as 30,000 years. Mr. Tallbull stated that he was trying to relate the ancient human remains to the geographic history of his Indian tribe.

The committee asked how the Department of the Interior would feel about the committee's recommendations regarding culturally unidentifiable associated funerary objects and the inclusion of non-Federally recognized Indian groups. Mr. McKeown responded that the Office of the Solicitor had informally reviewed the issue and concluded that to require repatriation of culturally unidentifiable associated funerary objects would probably require Congressional action. Mr. Haas suggested that the committee's recommendations include culturally unidentifiable associated funerary objects. Mr. McManamon responded that the committee should feel free to recommend whatever it wants, but that the Office of the Solicitor would advise the Secretary of the Interior on the appropriate regulatory or legislative action. Regarding non-Federally recognized Indian groups, he added that committee recommendations similar to that made in regarding the Mashpee human remains held by the Peabody Museum, Phillips Academy, would be acceptable to the Department of the Interior. However, these recommendations do not provide non-Federally recognized Indian groups with the Indian tribe status. Non-Federally recognized Indian groups must go through the same process before the committee each time they wish to repatriate human remains.

Ms. Naranjo asked if it is absolutely necessary to do physical examination of human remains in order

to determine if they are Native American given that some Indian tribes and Native Hawaiian organizations are adamantly opposed. Mr. Walker replied that physical examination would be necessary to determine if human remains, for which there is no additional documentation or associated funerary objects, are in fact Native American. Ms. Naranjo stated that Indian tribes in the area where the human remains were found should be able to try to make that determination. Mr. Walker explained that, for a variety of reasons, there are human remains in museums with no record of where they were found. Mr. Monroe suggested that very minimal physical examination might be sufficient to resolve this question in cases where groups have sensitivity about physical anthropological studies.

Mr. Tallbull described a reburial he conducted for a culturally unidentifiable skull found on Bureau of Land Management land. He was glad to rebury this individual. Mr. Haas mentioned that Hui Malama I Na Kupuna 'O Hawai'i Nei has a similar policy regarding the reburial of culturally unidentifiable human remains in Hawaii.

Mr. Monroe asked how non-Federally recognized Indian groups should be notified about human remains with which they may be affiliated. Mr. McManamon suggested that the first step for the committee might be to define these groups in their recommendations. The term "Indian tribe" should not be used since it already defined in the statute to include only Federally recognized Indian tribes.

The committee continued its discussion on the disposition of culturally unidentifiable and unclaimed human remains on the second day of the meeting. Ms. Naranjo suggested discussing the necessity of physical examinations of culturally unidentifiable human remains for which no other information is available. Mr. Sullivan recommended changing the wording from "It will be necessary," to "It may be appropriate," and then adding "This examination should be confined to nondestructive analysis." Mr. Haas expressed a concern that if analysis was not required that human remains would ultimately be left culturally unidentifiable and would remain in museums and Federal agency repositories indefinitely. Ms. Craig stated that Alaska Natives would not be opposed to minimal physical examinations in order to help determine affiliation. Mr. Tallbull emphasized that all human remains need to be repatriated, regardless of affiliation. Mr. Walker explained that this category included human remains for which there is not sufficient evidence to even state that they are even Native American. This should include a very small number of remains. The physical examination would be an attempt to determine whether or not they are Native American human remains and thus covered by the statute. Mr. Monroe emphasized that the position of the committee is to return all Native American human remains, including those that are culturally unidentifiable. He reemphasized Mr. Walker's point that the issue is "absence of any evidence," and feels that it is imperative that a nonintrusive physical examination be made to try to make a determination as to whether or not the human remains are Native American. Mr. Monroe stated further that he would have no problem with language limiting the extent of physical examinations.

Mr. Monroe suggested considering two subcategories for human remains with no information regarding affiliation: Native American human remains that have no additional information regarding cultural affiliation; and human remains that have no information as to whether they are Native American. He suggested that Native American human remains from a particular geographic area should be repatriated to Indian tribes in that area, with no need for examination by a physical anthropologist. Human remains for which there is no information should be examined by a physical anthropologist in order to determine if they are Native American.

Ms. Naranjo asked if the idea of a national cemetery for culturally unidentifiable human remains should be included in the committee's recommendations. Mr. Haas replied that this was one option for human remains that are obviously Native American but for which there is no cultural affiliation or geographic affiliation, but that this category would account for a relatively small number of individuals. Mr. Walker pointed out that while some of the larger museums have human remains from all over the United States, the human remains in most smaller museums are probably from the local vicinity. Ms. Naranjo pointed out that a regional approach may be better, when possible, due to the different cultural traditions of Indian tribes. Ms. Craig added that decisions regarding the disposition of culturally unidentifiable human remains from Alaska could be made at the annual meeting of the Alaska Federation of Natives. Mr. Monroe suggested having the human remains reinterred on tribal land. Mr. Tallbull added that just about any Indian tribe with available land would rebury those human remains. Ms. Naranjo reminded the committee that the North Dakota Intertribal Reinterment Committee has already expressed an interest in taking care of culturally unidentifiable human remains.

Mr. McManamon suggested the committee outline a course of action for Indian tribes wishing to repatriate culturally unidentifiable human remains. The committee members were uncomfortable with mandating disposition of human remains, and would rather have disposition be determined by the customs of the specific Indian tribes and Native Hawaiian organizations that received the human remains. Mr. Monroe suggested a simpler process where museums and institutions could repatriate culturally unidentifiable human remains to regional consortiums of Indian tribes for the purpose of dealing with such human remains. This would eliminate the need for NPS determining which groups are potentially affiliated with culturally unidentifiable human remains. The committee agreed with that recommendation. Mr. Walker added that the committee should be available to help mediate any differences of opinion. Mr. McManamon emphasized that the NPS does not wish to make these decisions for museums and other Federal agencies. He stressed the need for a consistent and fair method of deciding who to notify and return the culturally unidentifiable human remains. Mr. McManamon suggested using the US Indian Land Claims map as a tool to help identify Indian tribes to contact regarding return of culturally unidentifiable human remains.

Mr. Monroe again suggested that the simplest solution would be to repatriate culturally unidentifiable human remains to regional consortiums. Human remains with geographical affiliation should be repatriated to the consortium from that region. Human remains with no further identification should be repatriated to the regional consortium close to the museum or Federal agency. Mr. Sullivan agreed with this suggestion. He went on to question whether there was any value in compiling the list of culturally unidentifiable human remains as required by the statute, since Indian tribes want all human remains returned. Very few human remains may in fact be in the culturally unidentifiable category. Mr. Haas disagreed, speculating that the number of culturally unidentifiable human remains will actually be quite large.

Mr. Monroe and Mr. Haas suggested the following steps for repatriation of culturally unidentifiable human remains: NPS identifies regional consortiums and Indian tribes to be contacted; NPS notifies those regional consortiums and Indian tribes when there are culturally unidentifiable human remains; the first regional consortium or Indian tribe that contacts the museum or Federal agency and requests return of the culturally unidentifiable human remains has them returned following publication of notice in the *Federal Register*. Mr. Walker suggested that NPS, and not the committee, make the determinations of which regional consortium or Indian tribe should be contacted. He was concerned

that once again Indian tribes with Federal recognition would be give priority over non-Federally recognized Indian groups.

Mr. Sullivan described the three levels of regional affinity as follows: affinity through a relationship of shared group identity, without regard to BIA recognition; affinity through aboriginal land; and affinity with earlier people. Ms. Craig and Mr. Tallbull both stated that method would work in their areas. Mr. McManamon stated that the proposal was worth considering but wanted to point out potential problems concerning which groups to include in affinity groups, especially in areas with a history of multiple Indian tribes; difficulty in determining exactly where Indian tribes were and when, and a potential problem of rushed procedures after notification, if the first Indian tribe or group would be the one to repatriate the human remains.

The committee summarized their draft recommendations on the third day of the meeting. Mr. Haas summarized the three categories of culturally unidentifiable human remains, including: human remains which are affiliated with non-Federally recognized Indian groups; ancient human remains of Native American ancestry; and human remains with insufficient evidence for identification. The third category would have two subcategories; human remains with no information on affiliation; and human remains with limited information on affiliation, including general geographical or tribal information. Mr. McManamon explained that while the definition of Indian tribe cannot be changed by the committee, the committee can recommend to Congress that the definition be broadened. He added that the committee might make a recommendation for dealing with culturally unidentifiable funerary objects and other cultural items to the Secretary of the Interior and Congress.

The committee discussed the possibility of developing a map showing the aboriginal territories of all Indian tribes based on decisions of the Indian Claims Commission as well at Congressional decisions, treaties, and information from individual Indian tribes about their territories. Discussion touched on the practicality of individual Indian tribes preparing such maps, the accurateness of the Land Claims Commission map, and the questionable clarity of any one map incorporating all of the above-mentioned sources.

After further discussion, the committee agreed to have Mr. Haas prepare a draft containing the various ideas that were mentioned to then be distributed to the public for comment. The committee later reviewed the draft recommendations as prepared by Mr. Haas and recommended several minor changes for clarification and consistency with the statute.

Public Comment Concerning the Disposition of Culturally Unidentifiable Human Remains

Mr. Paul Little, North Dakota Intertribal Reinterment Committee, agreed that Indian tribes need to set up regional burial sites to take care of ancient and culturally unidentifiable human remains. Indian tribes know how to identify these human remains and want them taken care of immediately.

Mr. Dan Saunders, Project Manager for Cultural Resources for Earth Tech, suggested replacing the phrase, "It may be necessary. . ." with "It is recommended and may be appropriate to have the individuals examined by a qualified physical anthropologist or forensics expert." He also recommended including "The necessity for this examination must be weighed on an individual basis and take under

consideration individual Native American tribal beliefs, practices, and customs." He agreed with Mr. Little's idea of the establishment of a national sacred park for culturally unidentifiable human remains.

Mr. Tim Mentz, Standing Rock Sioux Indian tribe and North Dakota Intertribal Reinterment Committee, agreed with Ms. Naranjo regarding the use of "may" instead of "will" for physical examinations. He personally would only support visual examination of human remains. He recommended the committee take a position that all ancient human remains are Native American human remains regardless of the amount of information associated with them. He emphasized that Native Americans should determine the disposition of all Native American human remains, even culturally unidentifiable human remains, and added that Native Americans are compassionate enough to rebury human remains determined to be non-Native American.

Mr. Haas asked what Mr. Mentz recommended with regard to human remains that are culturally unidentifiable and probably not Native American. Mr. Mentz replied that all human remains have the right to be buried and put back respectfully in the ground. If these human remains can be determined to be from a non-Native American group, then that group should be contacted to determine disposition. Mr. Mentz expressed a further concern about funding for physical examinations since many museums do not have these resources readily available. He suggested the committee take the position that whenever there is a reasonable doubt about the identity of human remains a determination should be made that the human remains are Native American.

Mr. Donald Sutherland, Chief Archaeologist for the Bureau of Indian Affairs, asked what the usual procedure would be for the treatment of unidentified human remains. Do museums have established policies regarding the disposition of such a "John Doe?" Mr. Haas explained that the disposition of "John Doe" human remains depends on state law, but that many museums do hold numerous human remains from cultures that feel museum curation is an appropriate treatment. Mr. Haas explained that such cultural differences make identification especially important. Some cultures would have spiritual problems if non-Native human remains were repatriated by Indian tribes, or Native American human remains were repatriated to other groups.

Mr. Monroe, Mr. Walker, and Mr. Haas discussed the possible costs involved in physical examination of cultural unidentifiable human remains. Costs would vary with each individual depending on the location and the number of human remains. Mr. Monroe agreed with Mr. Mentz that the economical realities of the examination were a very important factor.

Mr. Steve Dondaro, Archaeologist with the California Department of Transportation, described research taking place at the University of California at Davis called the Ancient DNA Project in which bone samples are examined in an attempt to establish genetic fingerprints for specific ancient populations. At least one tribal group in Northern California has submitted samples to the project for testing in an effort to document the connection between their Indian tribe and ancient populations. He urged the committee not to preclude the use of DNA testing with regards to addressing this issue. Mr. Walker added that he is aware of other Native Californians who are interested in this type of analysis and have donated DNA samples. Many people are excited about this kind of research and do not see an ethical problem in doing analysis that results in some loss of skeletal material. Mr. Haas added that the recommendations do not preclude such testing. He agreed that it should be the decision

of Native Americans. Mr. Walker and Mr. Dondaro discussed the fact that this type of testing is very expensive.

Ms. Yolanda Chavez, Cultural Resource Specialist for Guidville Band of Pomo Indians and Vice Chairwoman of the Mendocina County Archaeological Commission, pointed out that in California, and perhaps other areas as well, non-Native Americans sometimes became members of the local Indian tribe. Non-Native American human remains may in fact have been respected members of local Indian tribe at the time of their death.

Mr. Glenn Russell, Curator of Archaeology for the Fowler Museum of Cultural History at UCLA, asked the committee to consider what will happen when, even after physical examination it can not be determined if particular human remains are Native American. Mr. Walker responded that may very well be the outcome in most cases.

Ms. Pauline Spear, California State Parks, described three cases of culturally unidentifiable human remains from her department, and pointed out how museums or Federal agencies could interpret lack of information as meaning non-Native American human remains and leave those human remains out of their inventories. She stated that her department reported all human remains in their collection, even non-Native American.

Discussion with Members of the Smithsonian Repatriation Review Committee

Mr. McManamon thanked the members of the Smithsonian Repatriation Committee and staff for attending the meeting and updating the NAGPRA Review Committee about the activities of the Smithsonian. He expressed appreciation for the cooperative and professional relationship exhibited between the NAGPRA Review Committee and the Smithsonian Repatriation Committee.

Mr. McManamon explained the recommendation of the NAGPRA Review Committee, as discussed previously at this meeting, that the Smithsonian Institution, specifically the National Museum of Natural History (NMNH), be brought under the provisions of NAGPRA by a Congressional amendment to NAGPRA. A number of the Smithsonian's activities already comply with the spirit of NAGPRA. In an attempt to fully understand what activities the Smithsonian is undertaking, the Committee is interested in having representatives from the Smithsonian summarize these activities.

Mr. Tom Killion, Program Manager of the Repatriation Office at the NMNH, presented the committee with a summary of activities, guidelines, and statistics relevant to repatriations completed to date and explained the museum's ongoing repatriation practices. NMNH must comply with the National Museum of the American Indian Act (NMAIA), which requires them to deal with documentation and repatriation of human remains and funerary objects. There is no language in the NMAIA covering sacred objects and objects of cultural patrimony. However, NMNH policy requires documentation, consultation, and return of sensitive objects as well. Mr. Chuck Smythe is in charge of the object summary operation. Summaries have been completed and consultations begun with groups about the return and identification of these sensitive objects.

Mr. Monroe and Mr. Haas expressed their appreciation of the efforts that the Smithsonian has made regarding repatriation issues, particularly NMNH's attempts to adhere to the provisions of NAGPRA

by policy. However, they were concerned that promises made by Congress to bring the Smithsonian under the provisions of NAGPRA have not been fulfilled. Mr. Monroe asked if NMNH had provide summaries of its collections to Indian tribes and Native Hawaiian organizations. Mr. Killion replied that NMNH is responding to individual tribal requests with complete object inventories. He explained that rather than give a general description to all Indian tribes about the objects at NMNH, the museum developed guidelines on providing complete inventories to requesting Indian tribes. Mr. Monroe expressed concern that this would exclude Indian tribes not aware of affiliated objects at the Smithsonian and, therefore, not requesting complete summaries. Mr. Monroe added that it is essential that the summaries provide Indian tribes with some very simple, straightforward information about the Smithsonian's holdings. Mr. Monroe recommended that the Smithsonian complete their summaries and distribute them, at which time the Smithsonian could continue with its present course of action. Mr. Killion respectfully recommended that Mr. Monroe make that recommendation to the Secretary of the Smithsonian. Mr. Haas further explained that the reasoning behind requesting summaries from the institutions rather than inventories was to provide Indian tribes with a general idea of where potentially affiliated objects were located, in order to help the Indian tribes develop a plan of action regarding repatriation.

Mr. Sullivan asked Mr. Killion what experiences the Smithsonian has had regarding non-Federally recognized Indian groups. Mr. Killion explained the NMNH philosophy of trying to meet with groups that are culturally affiliated, whether they are Federally recognized or not, including state-recognized Indian groups. He reported that most cases to date have involved Federally recognized Indian tribes, but NMNH continues the difficult process of consultation with non-Federally recognized Indian groups. He added that one of the reasons the Smithsonian Repatriation Office staff was attending this committee meeting was to find out how the committee was dealing with culturally unidentifiable human remains and non-Federally recognized Indian groups. Mr. Killion added that in the case of state recognition, the Smithsonian also looks at other factors, such as recognition criteria for each state, the agencies within each state that recognize Indian tribes, the kinds of services provided to the Indian tribes by these agencies, and historic information about the standing of those Indian tribes. Mr. Killion emphasized that state recognition on its own is not a blanket acceptance. Each situation needs to be considered on a case-by-case basis.

Mr. Walker asked if the Smithsonian had situations involving a combination of Indian tribes and non-Federally recognized Indian groups. Has the Smithsonian established a hierarchy to deal with those situations? Mr. Killion stated that type of situation has thus far not arisen. Possible conflicts have generally developed between two Federally recognized Indian tribes or several individuals within a single Federally recognized Indian tribe.

Mr. Russell Thornton, Chair of the Repatriation Review Committee for NMNH, stated that the main concern of his committee is to find ways to speed up the repatriation process. Most Indian tribes feel that priority needs to be put on repatriation of human remains. Mr. Haas pointed out that many other Indian tribes have made repatriation of sacred objects and objects of cultural patrimony their highest priority. The priorities need to be set by the Indian tribes and Native Hawaiian organizations and not by the Smithsonian. Mr. Thornton responded that NMNH was doing what was required by Congress, repatriate human remains and funerary objects as quickly as possible.

Review of Requests for Recommendations Regarding the Disposition of Culturally Unidentifiable Human Remains

The Commonwealth of Virginia: Mr. McKeown summarized the details of a request made by the Commonwealth of Virginia regarding approximately sixty human remains excavated on two different occasions from the Great Neck Site in Virginia Beach, Virginia. The human remains have been determined to be from the Chesapeake tribe, an identifiable earlier group within the context of this law. The Commonwealth of Virginia, based on archeological and historical evidence, believes that there are no present-day descendants of the Chesapeake tribe. However, historical reports indicate that the Chesapeake were allied with the Nansemond tribe in the early 17th Century and that some remnants of the Chesapeake may have been absorbed by the Nansemond tribe. The Nansemond Indian tribe received was chartered by the Commonwealth of Virginia in 1984 and recognized as a tribe in 1985. Oliver Perry, the Chief Emeritus of the Nansemond Indian tribe, stressed in a phone conversation to Mr. McKeown the documented alliance between the Nansemonds and the Chesapeake and requested the repatriation of the Chesapeake human remains, which will be reburied at the Great Neck site. The Commonwealth of Virginia has indicated its willingness to comply with this request.

Mr. Haas wondered if all other Indian groups recognized by the Commonwealth of Virginia were consulted about the proposed disposition of these human remains. Mr. McKeown asked was type of documentation the committee would like to see to fulfill the consultation requirement.

Mr. McManamon suggested written documentation from all potentially affiliated non-Federally recognized Indian groups in Virginia.

Mr. Monroe suggested that the committee make a recommendation that the Commonwealth of Virginia work with the Nansemond Indian tribe and contact other non-Federally recognized Indian groups. Absent any competing claims or disputes regarding disposition, the committee would approve repatriation of these human remains to the Nansemond Indian tribe. Ms. Craig and Mr. Tallbull agreed that the Commonwealth of Virginia should proceed with the repatriation. After further discussion, the committee decided to recommend that the Commonwealth of Virginia should consult with other state-recognized Indian groups and other potential groups, and then provide documentation that the consultation has occurred and what attempts have been made to identify the other groups. If there is no conflict or dispute, the matter does not have to come back before the committee and repatriation can occur.

Fort Hunter Liggett, U.S. Army: Ms. Susan Alvarez, Contract Cultural Resources manager for the U.S. Army at Fort Hunter Liggett, summarized the history of Fort Hunter Liggett. The installation consists of approximately 165,000 acres of land purchased in the 1940s from William Randolph Hearst, who acquired the area in 1800s. Prior to Hearst, the area was occupied by Salinan people for approximately 10,000 years. The fort's Historic Preservation Plan includes an interim burial protection policy developed between the Army, the State Historic Preservation Office, the Advisory Council on Historic Preservation, and the Salinan Tribal Council and other Salinan individuals. Ms. Donna Haro, Council Chair of the Salinan Nation, added that Army possession of the Salinan homeland has been both positive and negative: the area has been protected from private development but Salinan access to burials, villages sites, and caves is limited. The Salinan people have established a good rapport with the Army. Mrs. Alvarez stated that the Army and the Salinan Indian tribe are asking for the committee's concurrence with their repatriation agreement. There are no contesting groups.

Mr. Walker wanted reassurance that consultation occurred with all potentially affiliated Indian groups. Ms. Alvarez explained that a copy of the inventory was sent to all people who attended the Historic Preservation Plan hearings, including the one member of the Salinan group. Ms. Haro explained that the Salinan Nation formed the Salinan Indian Tribal Council as part of the process to receive Federal recognition. The Salinan Nation Cultural Preservation Association is a nonprofit organization, with the same membership as the Salinan Nation, established to deal with repatriation issues.

Mr. Haas asked what sources could be utilized to ensure full consultation with potentially affiliated Indian groups. Ms. Alvarez volunteered to work closely with the California Native American Heritage Commission, through Native Californian newspapers, as well as word of mouth. Ms. Haro described the process by which Salinan people become members of the Salinan Nation, which requires proof of Salinan heritage.

Mr. Monroe recommended that the Army repatriate these human remains to the Salinan Nation. He was satisfied there were no other groups that should be notified. The committee agreed, and Mr. Haas requested that notice of the proposed repatriation be published in the California Indian media as well as the *Federal Register*. Mr. McManamon summarized the committee's recommendation. A letter would be sent to the Army describing the committee's recommendation that the human remains be repatriated to the Salinan Indian Tribal Council. In addition to the normal publication in the *Federal Register*, notice should be placed in local and regional newspapers in order to alert the Indian and museum community about this planned repatriation.

Discussion of Future Applicability

The committee held a brief, general discussion of the topic of future applicability of the statute. The main issue discussed was how often should institutions that hold collections should update their summary and/or inventory information. Mr. Sullivan pointed out that although most museums and Federal agencies are no longer actively seeking objects that might be covered under the statute, such items might still be acquired as gifts. Mr. Walker added that the University of California-Santa Barbara has actually acquired objects with the intention of then going through the NAGPRA process for repatriation rather than seeing the objects remain in the private sector. Mr. Haas stated that when institutions acquire objects that have previously been included on summaries, they do not need to send out further summaries of the new objects unless there have been specific inquiries regarding the objects. In the latter case, those Indian tribes and Native Hawaiian organizations could be provided the additional information. If new objects are received, an updated summary would have to be provided. In the case of inventories, any additional human remains or objects received would have to be included in an additional inventory.

Discussion of the Committee's Future Activities

Upcoming Meetings: Mr. McManamon explained that due to budgetary and time constraints, the earliest the next committee meeting could be held would be in October, 1995. The committee discussed the possibility of individual committee members fulfilling their consultative duties at related meetings, such as meetings for the Bureau of Indian Affairs, the American Association of Physical

Anthropology, the Society for American Archeology, the American Association of Museums, the Keepers of the Treasures, plus meetings with individual tribal groups. After discussion, the committee decided to pursue a meeting in Anchorage, Alaska, in October to coincide with the annual meeting of the Alaska Federation of Natives.

Public Comment

Mr. Martin Alcala, Chairperson for the Gabrielino-Tongva Indian tribe, thanked the committee for its great concern on these difficult issues and asked the committee to please honor his departed chief, Fred Sparkemer Ellis. He stated that it will be necessary to change the very narrow definition of Indian tribe that the BIA imposes in order to continue with this work. Mr. Alcala agreed with Mr. Tallbull's actions in reburying an culturally unidentifiable skull and stated that all human remains need to be given proper spiritual ceremony, regardless of nationality or affiliation. He explained that he is recognized by the Native American Heritage Commission as the most likely descendant of his Indian tribe, which is both city and state recognized. He encouraged non-Federally recognized Indian groups to get involved in the recognition process on city, state, and Federal levels. Mr. Alcala explained that Indians will set aside differences and come together in order to conduct the proper ceremonies and repatriate human remains.

Mr. Roger Anyon, Director of Zuni Heritage and Historic Preservation, stated that in the case of human remains that have generic location identification, such as in New Mexico, the decision should be made by Indian tribes as to cultural affiliation, and that the land claims commission's maps were not made for determining cultural affiliation and should not be used for that purpose. Regarding the belief that all human remains should come out of museums, he stated individual Indian tribes should make that decision. For example, Zuni do not want human remains from their reservation returned at this time. He added that although the repatriation process needs to be expedient, enough time needs to be given so Indian tribes can fully consider all issues and the ramifications of their decisions.

Mr. Richard Begay, Navajo Nation, explained that he has completed two repatriation requests and agrees with Mr. Sullivan that the information provided by Indian tribes is very basic. His main concern is about the extent of testing needed for culturally unidentifiable human remains. Mr. Begay asked what type of analysis would be used in this determination and asked if the use of only nondestructive techniques would be possible. Mr. Walker replied that the most useful information in determining whether human remains are Native American is the context of the discovery. Is there an archaeological site nearby? What is the condition of the discovery? If that information is not available, physical examination is usually sufficient, consisting of visual examination and perhaps some measurements. If the human remains are fragmentary, then it may be necessary to do radiocarbon testing or DNA testing. These are destructive tests. Mr. Begay recommended adding language limiting examination to "simple visual examination" or "nondestructive analysis."

Ms. Yolanda Chavez, Cultural Resource Specialist with the Guidville Band of Pomo Indians and Vice Chairwoman of the Mendocino County Archaeological Committee, stated that her Indian tribe has a history of cremation, so their main concern is with the return of artifacts. She stated that her tribal council is concerned about revealing the sensitive purpose or use of these objects. She wondered if it would be possible to repatriate these items by just identifying what objects are theirs and not having to

explain what the objects were used for. She assured the committee that her Indian tribe does not want to take advantage of this in order to acquire objects that belong to others and that the tribal elders would be extremely careful in identifying objects. Ms. Naranjo stated that Indian tribes do not have to disclose any religious or sacred information.

Ms. Chavez asked why it was necessary to classify objects as either cultural patrimony or sacred objects. Mr. Monroe explained that those distinctions had to be made in order for the statute to pass through Congress. To claim a sacred object, a lineal descendant, Indian tribe, or Native Hawaiian organization needs to provide information to show how the item fits the statutory definition. Only Indian tribes and Native Hawaiian organizations may claim objects of cultural patrimony, but those claims must also provide information to show how the item fits the statutory definition. Ms. Chavez was concerned about the availability of the sensitive information used to claim sacred objects or objects of cultural patrimony. Mr. Sullivan explained that some information is included in the *Federal Register*, but the information is very basic.

Ms. Chavez also asked for clarification of the time of European contact. While European contact is usually dated to 1492, some Indian tribes did not experience contact until the 1800s. Ms. Naranjo stated that for the Southwest, contact occurred in the mid 1500s. Mr. Walker stated that contact in California dates to 1542. Mr. Haas explained that the term "contact" was not used to establish dates but rather to serve as guidelines for determining when human remains were without doubt Native American.

Mr. Charlie Cooke, a California Indian, explained that due to the various Spanish-Mexican-American genocides and mission dispersions he can be identified with four Indian groups, none of which are Federally recognized. He stated that steps need to be taken in order for repatriation to occur to non-Federally recognized Indian groups and added that he would like to see all human remains reburied as close as possible to where they came from, preferably on public land.

Mr. Frank Diaz de Leon, Co-chairman of the Koso Native Graves Protection Committee representing four Federally recognized Indian tribes and four non-Federally recognized Indian groups, stated his committee is currently establishing an agreement between their Indian tribes to determine aboriginal boundaries. These maps will be forwarded to the NAGPRA Review Committee as soon as the agreements are made. Mr. Diaz de Leon explained that all aboriginal areas in California have overlapping boundaries, which makes these agreements very important. Eventually, the California Indian tribes will have full agreement on aboriginal boundaries. He added that some groups with overlapping boundaries have very diverse cultures.

Ms. Reba Fuller, NAGPRA Project Director for the Central Sierra Me-Wuk Cultural and Historic Preservation Committee, stated that her committee was founded in by several Indian tribes and non-Federally recognized Indian groups February 1991 to provide a mechanism for the non-Federally recognized Indian groups to repatriate human remains and cultural items. Ms. Fuller concurred with Mr. Begay's comments regarding nondestructive physical examination of culturally unidentifiable human remains. She explained that 105 of the 550 Federally recognized Indian tribes are in California, accounting for 243,000 of the 1,283,000 enrolled members in the United States. In addition, there 80,000 to 120,000 self-defined "Native Americans" in the state. Mr. Monroe stated that the committee was aware of the problems of non-Federally recognized Indian groups and tried unsuccessfully to

change the definition of Indian tribe in NAGPRA.

Ms. Lynn Gamble, American Indian Study Center at UCLA, agreed with Mr. Walker that the situation in California, with the high number of non-Federally recognized Indian groups, makes the use of maps complicated. She suggested the Handbook of North American Indians by the Smithsonian as one source to help show current ethnographic boundaries. She also recommended that individuals interested in learning more about the situation in California attend the California Indian Conference to be held in the fall of 1995.

Ms. D. Garcia, Gabrielino-Tongva and Serrano from Southern California, stated that her Indian group is recognized by the state of California and has participated in treaty negotiations. She asked the committee what steps would be necessary for her Indian tribe to be included in the NAGPRA process. Mr. Walker explained that the categories of unratified treaty Indian groups and state-recognized Indian groups were under discussion as possible categories to include in determining affiliation for culturally unidentifiable human remains. Mr. Monroe added that a letter to the committee would not accomplish anything for her Indian group since the committee has no authority to grant status for NAGPRA participation. However, such letters could be used as backup documentation for this issue. The definition of Indian tribe is a problem that is inherent in the statute. Mr. Monroe added that the committee is looking for ways to expand the definition of Indian tribe to include as many Indian groups as possible. No specific method has yet been developed. Mr. McKeown explained the process utilized by Peabody Museum, Phillips Academy, regarding human remains culturally affiliated with the Mashpee, a non-Federally recognized Indian group. Mr. Haas recommended that Ms. Garcia contact the members of the Mashpee that were involved in that case. He encouraged her to continue working toward accomplishing the repatriation goals of her Indian group.

Ms. Donna Haro, Council Chair of the Salinan Nation, stated that she agrees with the committee's discussion of the definition of Indian tribe. It would probably be necessary to call in a coroner to determine if culturally unidentifiable human remains are Native American. There is a spiritual issue involved in reburying culturally unidentifiable human remains in the wrong tradition. Ms. Haro explained that she is personally recognized by the state of California on as a most likely descendant. The Salinan Nation is not state recognized. She emphasized that the Salinan Nation would help the committee to resolve the issue of non-Federally recognized Indian groups.

Ms. Cynthia Longhorn, Tribal Secretary for the Absentee-Shawnee Indian Tribe and Chair for the Joint Shawnee Council, suggested Oklahoma as a location for the next committee meeting. She stressed the need to hear from as many Indian people as possible regarding repatriation issues. While Indian tribes have been using the statute to take care of ancestors, they also must coordinate their activities with other Indian tribes. There are no standard repatriation procedures that will work within the context of the variety of tribal practices. That is why consultation is critical. The repatriation process will take a long time. She felt that the 30 day time limit to respond to *Federal Register* notices was not sufficient.

Mr. Tim Mentz, member of the Standing Rock Sioux Indian tribe of North Dakota and the North Dakota Intertribal Reinterment Committee, welcomed the committee members and stated that he appreciated their efforts to protect tribal rights. He stressed the importance of protecting Native American culture and spirituality when interpreting man-made law and described how the sacred nature of burials has existed since time immemorial. He explained that the North Dakota Intertribal

Reinterment Committee does not believe any test can conclusively determine whether or not human remains are Native American. The committee feels that there are no culturally unidentifiable human remains. Regarding the draft recommendations, Mr. Mentz stated that he also is against destructive analysis, but he agrees with the other points in the draft.

Mr. Mentz stated that the Sacred Hoop was broken when human remains and objects were taken. They need to be returned in order to mend the Sacred Hoop. He urged the committee to treasure their responsibility and use it wisely. Regarding the committee's recommendations on culturally unidentifiable human remains, Mr. Mentz commended the committee for their viewpoint that all ancient human remains and objects are Native American and that all decisions about what happens to the human remains of Native American individuals and associated funerary objects from anywhere in the United States should rest in the hands of Indian tribes. He made several suggestions concerning the draft recommendations regarding clarification of funding for committee activities, funding requirements of Indian tribes, consistency of the definition of ancient human remains, and the premise that all ancient human remains are Native American.

Mr. David Robinson, Co-Chairman of the Koso Native Graves Protection Committee, emphasized the importance of including all Native Americans in repatriation issues and explained the formation of the Koso Native Graves Protection Committee as an effort to include all lineal descendants. By organizing Indian tribes, Federal recognition is no longer an issue in dealing with NAGPRA and repatriation issues. Mr. Robinson explained his Indian tribe's 30,000-year plan for retain their land, culture, and language long into the future.

Ms. Lillian Valenzuela Robles, a Juaneño elder, described problems her Indian tribe has had in receiving inventory information from Long Beach State University. She asked for the committee's help. She also described actions taken by the Board of Supervisors of Orange County allowing development on a sacred site called Bolsa Chica. She described how restrictions at the site made proper mourning for repatriated human remains impossible. Ms. Robles complained about the BIA's lack of interest which has made her attempts to prove her genealogy and gain Federal recognition difficult. Mr. Haas stated that Long Beach State is required to submit an inventory by November of 1995. Ms. Robles inquired about a lawsuit between Long Beach State and the Department of Interior. Mr. McManamon explained that the lawsuit was filed by Long Beach State against the Department for not having regulations in place that clearly describe what the University has to do to comply with the statute. The University is asking for clarification in light of both NAGPRA and the existing policy of the State of California regarding repatriation of human remains. Ms. Robles explained that her Indian tribe was aware of 22 bodies that were recovered, including some Acagahemen human remains now at the University.

Ms. Pauline Spear, Coordinator for the Repatriation Program of the California State Parks, stated that after NAGPRA was passed, California Assemblyman Katz promoted a bill that made it the policy of the State of California to repatriate Native American human remains and funerary objects. Her department has interpreted the state policy to require the repatriation of all Native American human remains and associated funerary objects to the most appropriate Indian group. She supports a process where each repatriation is based on its own merits and does not determine future repatriations or other actions. Ms. Spear asked what would happen where both Indian tribes and non-Federally recognized Indian groups request repatriation of human remains. Mr. Walker explained that situation has already

arisen between the Santa Ynez Chumas and various non-Federally recognized Chumash groups. The Federally recognized Indian tribe has standing to claim the human remains if they choose. Mr. McManamon mentioned a second situation in which the Federally recognized Gayhead Wampanoag Indian tribe agreed to let the Hood Museum repatriate culturally affiliated human remains to the non-Federally recognized Mashpee Wampanoag Indian tribe.

Mr. Donald Sutherland, BIA, stressed the importance of consultation regarding this statute and, more specifically, the issue of culturally unidentifiable human remains and the possibility of different Indian tribes proving affiliation.

Mr. Dan Weiner, outside counsel to the American Museum of Natural History in New York City, reminded the committee of their requirement to consult with Native Hawaiians, Native Americans, scientific groups and museums in formulating these recommendations. He suggested that the committee publish or circulate these recommendations public comment in order to facilitate the required consultation. He also reminded the committee that only human remains are considered "culturally unidentifiable" in the statute. Recommendations that go beyond the statute will ultimately end up being rejected and will be very frustrating. One solution would be for people to testify to the importance of inclusion of these objects in the statute at the upcoming oversight hearings.

Mr. Weiner cautioned the committee against recommending a policy for returning all human remains to regional groups in light of testimony given by the Zuni and other Indian tribes regarding their desire to leave human remains in museums. He added that not all Indian tribes want non-Federally recognized Indian groups to be included under NAGPRA. Mr. Weiner suggested that the committee their decision not to make appropriate recommendations or requirements with regard to the disposition of human remains and objects more consideration, because not all repatriated items have been treated with proper respect. He added that the committee is required in the statute to make recommendations regarding the future care of repatriated cultural items. Not all Indian tribes are opposed to scientific testing of human remains. There is a great diversity and divergence of views. Therefore, broad statements about what all Native Americans want regarding physical testing might be a disservice.

Regarding the categories of culturally unidentifiable human remains previously discussed by the committee, Mr. Weiner agrees with the committee's recommendations for culturally unidentifiable human remains that are affiliated with a non-Federally recognized Indian group. He believes the approach taken with the Mashpee is solid. He suggests that the same approach be used for those "Native American" human remains that lack sufficient evidence to the preponderance of evidence requirement. Indian tribes could ask for repatriation of these human remains in a similar manner as the Mashpee. Mr. Weiner respectfully disagreed with the statement that all ancient human remains should be returned to Indian tribes lacking any shared group identity. He described museums as "Keepers of the Stories," preserving culture and traditions. He stated that reburial of these human remains could result in a loss of information for future generations.

Mr. Monroe responded that many in the museum community do not agree with Mr. Weiner's statement of retaining ancient human remains that have no affiliation with any present group. Mr. Haas pointed out that the statute actually charges the committee with making recommendations regarding future care of cultural items which are to be repatriate, "if appropriate." He personally feels it is not appropriate for the committee to make recommendations regarding disposition of human

remains. Mr. Haas thanked Mr. Weiner for his comments, particularly concerning consultation, and added that although the committee members may disagree in some areas, Mr. Weiner's remarks are important for the committee to consider.

Mr. Andy Yatsko, Naval Air Station North Island in San Diego, described the frustration of not being able to repatriate human remains to a non-Federally recognized Indian group. He explained that the North Island area is clearly affiliated with the Gabrielino, a non-Federally recognized Indian group. He described his frustration in not being able to deal formally with these legitimate Native Americans. Mr. Yatsko expressed his desire that the committee continue to try to develop a mechanism to deal with all non-Federally recognized Indian groups, and he agreed with the concept of consensual understanding between Native American groups. He asked for guidance in dealing with non-Federally recognized Indian groups to reach a consensus on how to treat numerous human remains in a way that is sensitive to the needs of the indigenous people of his area. Mr. Haas asked Mr. Yatsko and others about the possibility of using state recognition or treaty negotiation, either approved or not, as a qualification to NAGPRA participation. Mr. Monroe then asked if Mr. Yatsko would be able to use the process, utilized by the Mashpee, of unrecognized groups requesting repatriation through the committee process. Mr. Yatsko replied that it would be possible, but that he is concerned that the situation would be shelved by the agency because of the lengthy and complicated processes involved.

Closing

Ms. Naranjo expressed her appreciation to the audience for attending the meeting. Mr. McManamon thanked the members of the committee for their time and effort, the University of Loyola for the use of their facilities, and to the members of the public for attending the meeting. Mr. Paul Little gave the closing blessing. The meeting was adjourned at 5:11 p.m. on Saturday, February 18, 1995.

Approved:

 /S/ Tessie Naranjo
Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Committee

 October 24, 1997
Date